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Where a Federal question is duly raised at the proper time and in a proper manner in the state court and the judgment of the state court necessarily involves the decision of such question this court on writ of error will review such judgment although the state court in its opinion made no reference to the question. And if it is evident that the ruling of the state court purporting to deal only with local law has for its premise or necessary concomitant a cognizable mistake, that may be sufficient to warrant a review. *Schlemmer v. Buffalo, R. & P. Ry. Co.*, 1.

2. *Review of judgment of Supreme Court of Philippine Islands—Errors of law disregarded if not stated in assignment of error.*

In reviewing judgments of the Supreme Court of the Philippine Islands the same rule applies as does in reviewing judgments of the Circuit Courts of the United States that alleged errors of law not stated in the assignment of errors filed with the petition for the writ of error will be disregarded unless they are so plain that under the provision in the thirty-fifth rule to that effect the court may at its option notice them, but this court will not subject the opinion of the court below to minute scrutiny to discover error of law when on the whole it is clear, as in this case, that the facts found by that court justify the judgment under review. *Behn v. Campbell*, 403.

3. *Mode of review of errors in action at law—Scope of review on appeal and writ of error.*

In the absence of modification by statute the rule in respect to all courts whose records are brought for review to this court is that errors alleged to have been committed in an action at law can be reviewed here only by writ of error; but this court has always observed the rule recognized by legislation that while an appeal brings up questions of fact as well as of law, on writ of error only questions of law apparent on the record can be considered, and there can be no inquiry whether there was error in dealing with questions of fact. *Ib.*

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1. *Right to increased pay under § 7 of act of April 26, 1898.*

Section 7 of the act of April 26, 1898, 30 Stat. 364, was not enacted to give increased pay for the discharge of the ordinary duties of the service, but to give compensation for the greater risk and responsibility of active military command; and the assignment under orders of competent authority must be necessary and non-gratuitous. *United States v. Mitchell*, 161.

2. *When officer of army is exercising command under assignment in orders by competent authority within meaning of § 7 of act of 1898.*

A second lieutenant of the United States army who, in the absence of the captain and first lieutenant assumes command of the company in regular course under § 253 of the Army Regulations of 1895, is not exercising under assignment in orders issued by competent authority, a command above that appertaining to his grade within the meaning of § 7 so as to obtain the benefit of the statute, even though a regimental special order may issue directing him to assume the command, and this action may be attempted to be ratified by special order of the commanding general where it is not apparent that any necessity for special direction existed. *Ib.*

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Where a claim is founded upon an open account or upon a contract, express or implied, and can be proved under § 63a of the bankruptcy act, if the claimant chooses to waive the tort and take his place with the other creditors, the claim is one provable under the act and barred by the

discharge. The words in the fourth subdivision of § 17, "while acting as an officer, or in any fiduciary capacity," extend to "fraud, embezzlement, misappropriation," as well as "defalcation." (*Crawford v. Burke*, 195 U. S. 176.) *Tindle v. Birkett*, 183.

2. *Life insurance policies within meaning of § 70a of bankruptcy act of 1898.*

The provisions in § 70a of the bankruptcy act of 1898, that a bankrupt having policies of life insurance payable to himself and which have a cash-surrender value, may pay the trustee such value and thereafter hold the policies free from the claims of creditors, are not confined to policies in which the cash-surrender value is expressly stated, but permit the redemption by the bankrupt of policies having a cash-surrender value by the concession or practice of the company issuing the same. *Hiscock v. Mertens*, 202.

3. *When jurisdiction of bankruptcy court concurrent with that of state court—Effect of amendment of February 5, 1903, to bankruptcy act of 1898.*

The possession of a temporary receiver in bankruptcy of the proceeds of property, upon which the bankrupt had fraudulently imposed a lien, deposited as a special fund to await the further order of the court, did not affect the rule that under the bankruptcy act of 1898, prior to the amendment of February 5, 1903, 33 Stat. 797, the state court in which an action could have been brought prior to the bankruptcy to set aside the lien had exclusive jurisdiction of a similar action brought by the trustee. The amendment of February 5, 1903, gave the bankruptcy court in such a case concurrent, not exclusive, jurisdiction. *Frank v. Vollkommer*, 521.

4. *When presumed that trustee represented claims of creditors in proceeding in state court to set aside chattel mortgage.*

Where it was necessary that a trustee in bankruptcy should represent judgment creditors in order to attack the validity of a chattel mortgage given by the bankrupt, if the state court has set the mortgage aside and the record shows that all the proceedings in the bankruptcy court were in evidence in the state court, it will be presumed that the trustee represented the necessary claims of creditors, although the evidence is not returned to this court. *Ib.*

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Under the acts of Congress of March 1, 1817, 3 Stat. 348, admitting Mississippi, and of June 15, 1836, 5 Stat. 50, admitting Arkansas to the Union, the boundary line between the two States is the middle of the main channel of the Mississippi River as it was in 1817, and at the point where Island No. 76 is situated it was at that time on the Mississippi side of that island which has never been within the State of Mississippi, notwithstanding attempts on the part of that State to exercise jurisdiction thereover. *Moore v. McGuire*, 214.

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*Board of Trade v. Christie Grain and Stock Co.*, 198 U. S. 236, followed in *Hunt v. New York Cotton Exchange*, 322.  
*Crawford v. Burke*, 195 U. S. 176, followed in *Tindle v. Birkett*, 183.  
*De Lima v. Bidwell*, 182 U. S. 1, followed in *Pearcy v. Stranahan*, 257.  
*Jellenik v. Huron Copper Mining Co.*, 177 U. S. 1, 10, followed in *Citizens' Sav. & Trust Co. v. Illinois Central R. R.*, 46.  
*Johnson v. Southern Pacific Co.*, 196 U. S. 1, followed in *Schlemmer v. Bufalo, R. & P. Ry. Co.*, 1.  
*Jones v. United States*, 137 U. S. 202, followed in *Pearcy v. Stranahan*, 257.  
*Northern Pacific Railway v. Slaght*, 205 U. S. 122, followed in *Same v. Samé*, 134.  
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While under § 6 of the Court of Appeals Act of 1891, 26 Stat. 828, a certiorari can only be issued when a writ of error cannot be, it will not be issued merely because the writ of error will not lie; but only where the case is one of gravity, where there is conflict between decisions of state and Federal courts, or between those of Federal courts of different circuits, or something affecting the relations of this Nation to foreign nations, or of general interest to the public. *Fields v. United States*, 292.

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The law of South Dakota imposing an annual license charged on travelling salesmen selling, offering for sale, or soliciting orders for intoxicating liquors in quantities of less than five gallons is not unconstitutional because repugnant to the commerce clause of the Constitution of the United States. *Delamater v. South Dakota*, 93.

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The decision of a state court involving nothing more than the ownership of property, with all parties in interest before it, cannot be regarded by the unsuccessful party as a deprivation of property, without due process of law, simply because its effect is to deny his claim to own such property. The Fourteenth Amendment did not impair the authority of the States to determine finally, according to its settled usages and established modes of procedure, such questions, when they do not involve any right secured by the Federal Constitution or by any valid act of Congress, or by any treaty. *Tracy v. Ginzberg*, 170.



3. *Due process of law; effect of provisions of state constitution and laws.*

The requirement in the Fourteenth Amendment of due process of law does not take up the special provisions of the state constitution and laws into the Fourteenth Amendment for the purpose of the case, and in that way subject a state decision that they have been complied with to revision by this court. *Patterson v. Colorado*, 454.

4. *Due process of law; decision of state court as infraction of.*

As a general rule the decision of a state court upon a question of law is not an infraction of the due process clause of the Fourteenth Amendment and reviewable by this court on writ of error merely because it is wrong or because earlier decisions are reversed. *Ib.*

5. *Due process of law; violation of contract obligation—Validity of New York law imposing tax on exercise of power of appointment.*

The imposition of a transfer or inheritance tax under ch. 284, Laws of New York, 1897, on the exercise of a power of appointment in the same manner as though the estate passing thereby belonged absolutely to the person exercising the power, does not, although the power was created prior to the act, deprive the person taking by appointment, and who would not otherwise have taken the estate, of his property without due process of law in violation of the Fourteenth Amendment; nor does it violate the obligation of any contract within the protection of the impairment clause of the Federal Constitution. *Chanler v. Kelsey*, 466.

6. *Due process of law and equal protection; deprivation of property—Validity of Nebraska flag law.*

The statute of Nebraska preventing and punishing the desecration of the flag of the United States and prohibiting the sale of articles upon which there is a representation of the flag for advertising purposes is not unconstitutional either as depriving the owner of such articles of his property without due process of law, or as denying him the equal protection of the laws because of the exception from the operation of the statute of newspapers, periodicals or books upon which the flag may be represented if disconnected from any advertisement. *Haller v. Nebraska*, 34.

7. *Due process and equal protection of laws—Police power of State to regulate mines and mining.*

It is an appropriate exercise of the police power of the State to regulate the use and enjoyment of mining properties, and mine owners are not deprived of their property, privileges, or immunities without due process of law or denied the equal protection of the laws by the Illinois mining statute of 1899, which requires the employment of only licensed mine managers and mine examiners, and imposes upon the mine owners liability for the willful failure of the manager and examiner to furnish a reasonably safe place for the workmen. *Wilmington Mining Co. v. Fulton*, 60.

See JURISDICTION, A 6.

8. *Eminent domain; validity of taking where amount assessed for benefits exceeds value of property.*

Constitutional rights like others are matters of degree, and a street opening statute, which has stood for a long time will not be declared unconstitutional as taking property without compensation because in a particular instance the amount assessed under the strict letter of the statute exceeded the value of the property, but the statute should be so interpreted, as is possible in this case, so that the apportionment of damages be limited to the benefit. *Martin v. District of Columbia*, 135.

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The Constitution has conferred upon the Government power to borrow money on the credit of the United States and that power cannot be burdened, impeded, or in any way affected by the action of any State. (*Weston v. Charleston*, 2 Pet. 449.) *Home Savings Bank v. Des Moines*, 503.

10. *Fifth Amendment; effect upon powers of States.*

Article V of Amendments to the Constitution does not operate as a restriction on the powers of the State, but solely upon the Federal Government. (*Brown v. New Jersey*, 175 U. S. 172.) *Barrington v. Missouri*, 483.

11. *Full faith and credit; when judgment not entitled to.*

Where an action is brought to recover upon a judgment the jurisdiction of the court rendering the judgment is open to inquiry; and the Constitutional requirement as to full faith and credit in each State to be given to the public acts, records and judicial proceedings of every other State does not require the enforcement of a judgment rendered without jurisdiction or otherwise wanting in due process of law. *Wetmore v. Karrick*, 141.

12. *Full faith and credit; judgment in personam without jurisdiction of person, not entitled to.*

A judgment rendered in *personam* against a defendant without jurisdiction of his person is not only erroneous but void, and is not required to be enforced in other States under the full faith and credit clause of the Constitution or the act of Congress passed in aid thereof, § 905, Rev. Stat. *Ib.*

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## CONTRACTS.

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The rule that prior negotiations are merged in the contract is general in its nature and does not preclude reference to letters between the parties prior to the execution of a contract in order to determine whether from the language used in the contract the parties intended stipulated deductions for delay as a penalty or as liquidated damages. *United States v. Bethlehem Steel Co.*, 105.

2. *Time as of essence—Deductions for delay in performance.*

Where in response to Government advertisements the same party submits different bids, the largest price being for the shortest time of delivery, the acceptance of the bid for the shorter time is evidence that the element of time is of essence, and a stipulated deduction of an amount per day equivalent to the difference between the short and long time for delivery is to be construed as liquidated damages for whatever delay occurs in the delivery, and not as a penalty, although the word penalty may have been used in some portions of the contract. *Ib.*

3. *Grant of immunity from exercise of governmental power not transferable.*

Although the obligations of a legislative contract granting immunity from the exercise of governmental authority are protected by the Federal Constitution from impairment by the State, the contract itself is not property which as such can be transferred by the owner to another, but is personal to him with whom it is made and incapable of assignment, unless by the same or a subsequent law the State authorizes or directs such transfer; and so held as to a contract of exemption with a street railway company from assessments for paving between its tracks. *Rochester Ry. Co. v. Rochester*, 236.

4. *Legislative immunity from taxation; construction of grant of.*

The rule that every doubt is resolved in favor of the continuance of governmental power, and that clear and unmistakable evidence of the intent to part therewith is required, which applies to determining whether a legislative contract of exemption from such power was granted also applies to determining whether its transfer to another was authorized or directed. *Ib.*

5. *Legislative contract of immunity from taxation not transferable.*

A legislative authority to transfer the estate, property, rights, privileges and franchises of a corporation to another corporation does not authorize the transfer of a legislative contract of immunity from assessment. *Ib.*

6. *Building contracts—Conclusiveness of architect's certificate.*

Although under a building contract the builder, to be entitled to payment, must first obtain the certificate of the architect, in the absence of, a provision in plain language to that effect, the certificate is not conclusive as to the amount due nor a bar to the owner showing a violation of the contract, in material parts, by which he has sustained damage. *Mercantile Trust Co. v. Hensey*, 298.

7. *Bonds—Right of bona fide purchaser before maturity of county bonds to assume that conditions of issue were complied with.*

Where the qualified voters of the county vote for an issue of bonds for subscription to stock of a railroad on condition that the county be exonerated from a prior subscription authorized for another railroad, and thereafter the judge of the county court authorized by statute to make the subscription enters an order to that effect, receives the stock subscribed for, and issues the bonds, and nothing further is ever done in regard to the prior subscription, although no formal exoneration thereof was ever made or attempted, a *bona fide* purchaser before maturity of the bonds and coupons for value is entitled to assume in his purchase that the county had been fully exonerated from the prior subscription. *Quinlan v. Green County*, 410.

See CONSTITUTIONAL LAW, 5;  
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See NEGLIGENCE, 1;  
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### CORPORATIONS.

1. *Merger of corporations operating as dissolution of constituent—Effect of legislative contract of exemption from taxation.*

Although two corporations may be so united by one of them holding the stock and franchises of the other, that the latter may continue to exist and also to hold an exemption under legislative contract, that is not the case where its stock is exchanged for that of the former and by operation of law it is left without stock, officers, property or franchises, but under such circumstances it is dissolved by operation of the law which brings this condition into existence. *Rochester Ry. Co. v. Rochester*, 236.

2. *Power to receive from another corporation an exemption inconsistent with its charter or laws of State.*

Where a corporation incorporates under a general act which creates certain

obligations and regulations, it cannot receive by transfer from another corporation an exemption which is inconsistent with its own charter or with the constitution or laws of the State then applicable, even though under legislative authority the exemption is transferred by words which clearly include it. *Ib.*

See CONTRACTS, 5;                      PROCESS;  
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### COURTS.

1. *Contempts; status of judge in punishing for contempt.*

In punishing a person for contempt of court the judges act impersonally and are not considered as sitting in their own case. (*United States v. Shipp*, 203 U. S. 563, 674.) *Patterson v. Colorado*, 454.

2. *Contempts; truth of improper publication as defense to.*

While courts, when a case is finished, are subject to the same criticisms as other people, they have power to prevent interference with the course of justice by premature statements, arguments, or intimidation, and the truth is not a defense in a contempt proceeding to an improper publication made during the pending suit. *Ib.*

3. *Federal interference by habeas corpus with regular course of procedure under state authority.*

Although the power exists and will be exercised in cases of great importance and urgency, a Federal court or a Federal judge will not ordinarily interfere by *habeas corpus* with the regular course of procedure under state authority, but will leave the petitioner to exhaust the remedies afforded by the State for determining whether he is legally restrained of his liberty, and then to bring his case to this court by writ of error under § 709, Rev. Stat.; this rule applies to a case where petitioner contends that his commitment under a state statute, providing for the commitment of one acquitted by reason of insanity, is a deprivation of liberty without due process of law, in violation of the Fourteenth Amendment. *Urquhart v. Brown*, 179.

4. *Judicial notice as to location of territory.*

The court takes judicial cognizance whether or not a given territory is within the boundaries of the United States, and is bound to take the fact as it really exists however it may be averred to be. *Pearcy v. Stranahan*, 257.

5. *Power to overrule long established constitutional construction.*

A long established and steadily adhered to principle of constitutional construction precludes a judicial tribunal from holding a legislative

enactment, Federal or state, unconstitutional and void unless it is manifestly so. *Halter v. Nebraska*, 34.

See BANKRUPTCY, 3;	JURISDICTION;
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## CRIMINAL LAW.

### 1. *Corpus delicti*; sufficiency of circumstantial evidence to establish.

While in this case there was no witness to the homicide and the identification of the body found was not perfect, owing to its condition caused by its having been partially burned, yet as the circumstantial evidence was clearly enough to warrant the jury in finding that the body was that of the person alleged to have been murdered and that he had been killed by defendant, the trial court would not have been justified in withdrawing the case from the jury, but properly overruled a motion to instruct a verdict of not guilty for lack of proof of the *corpus delicti*. *Perovich v. United States*, 86.

### 2. *Corpus delicti*; submission to jury of question of guilt on circumstantial evidence.

In the absence of positive proof, but where there is circumstantial evidence of the *corpus delicti*, it is not error to submit to the jury the question of defendant's guilt with the instruction that the circumstantial evidence must be such as to satisfy the jury beyond a reasonable doubt that the *corpus delicti* has been established. *Ib.*

### 3. Evidence of conversations between officer and accused; admissibility.

The testimony of a marshal as to conversations between him and the defendant charged with murder which were voluntary, and not induced by duress, intimidation or other improper influences, are admissible. *Ib.*

### 4. Interpreters; appointment discretionary with trial court.

Whether in a criminal trial the court interpreter should be appointed is a matter largely resting in the discretion of the court, and its refusal so to do is not an error where it does not appear that the discretion was in any way abused. *Ib.*

### 5. Removal for trial under § 1014, Rev. Stat.; admissibility of evidence to disprove *prima facie* case made by indictment.

While in a removal proceeding under § 1014, Rev. Stat., an indictment constitutes *prima facie* evidence of probable cause it is not conclusive, and evidence offered by the defendant tending to show that no offense triable in the district to which removal is sought had been committed

is admissible; and its exclusion is not mere error but the denial of a right secured under the Federal Constitution. *Tinsley v. Treat*, 20.

6. *Removal for trial under § 1014, Rev. Stat.; procedure for.*

A district judge of the United States on application to remove from the district where defendant is arrested to that where the offense is triable acts judicially and the provision of § 1014, Rev. Stat., that the proceedings are to be conducted agreeably to the usual mode of process in the State against offenders has no application to the inquiry on application for removal. *Ib.*

*See* EXTRADITION;

JURISDICTION, A 1, 4, 5, 6.

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*See* TERRITORY, 2.

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*See* TERRITORY, 2.

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*See* CONSTITUTIONAL LAW, 8;

JURISDICTION, B 7;

PRACTICE AND PROCEDURE, 2.

DECLARATIONS.

*See* CRIMINAL LAW, 3.

DEFENSES,

*What amounts to a defense.*

Whatever tends to diminish a plaintiff's cause of action or to defeat recovery in whole or in part amounts in law to a defense. *Whitfield v. Aetna Life Ins. Co.*, 489.

*See* COURTS, 2;

INSURANCE, 2;

PRACTICE AND PROCEDURE, 8.

DEPARTMENT OF THE INTERIOR.

*See* INDIANS, 2.

DESCENT.

*See* WILLS.

DINGLEY ACT.

*See* TERRITORY, 2.

DISTRICT OF COLUMBIA.

*See* CERTIORARI;

JURISDICTION, A 1;

TERRITORIES.

## DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW;  
COURTS, 3;  
JURISDICTION, A 6.

## ELECTION.

1. *Election defined and differentiated from transfer.*

Election is simply what its name imports; a choice shown by an overt act between two inconsistent rights either of which may be asserted at the will of the chooser alone. Transfer is different from election and requires acts of a different import on the part of the owner and corresponding acts on the part of the transferee. *Bierce v. Hutchins*, 340.

2. *Effect of attempting to exercise right to which party not entitled.*

The fact that a party, through mistake, attempts to exercise a right to which he is not entitled does not prevent his afterwards exercising one which he had and still has unless barred by the previous attempt. *Ib.*

See RES JUDICATA, 2.

## EMBEZZLEMENT.

See JURISDICTION, A 1.

## EMINENT DOMAIN.

See CONSTITUTIONAL LAW, 8.

## EQUAL PROTECTION OF LAWS.

See CONSTITUTIONAL LAW, 6, 7.

## EQUITY.

See MORTGAGES AND DEEDS OF TRUST.

## ESTATES.

See CONSTITUTIONAL LAW, 5;  
PRACTICE AND PROCEDURE, 5;  
TITLE.

## EVIDENCE.

*Hearsay as evidence.*

Statements of a witness, although based on hearsay, constitute evidence in the cause unless seasonably objected to as hearsay. *Schlemmer v. Buffalo, R. & P. Ry. Co.*, 1.

See CONTRACTS, 1; JURISDICTION, A 6;  
CRIMINAL LAW, 2, 3, 5; MARRIAGE;  
SAFETY APPLIANCE ACT.

## EXEMPTIONS

See ACTIONS;  
CONTRACTS, 3, 4;  
CORPORATIONS, 1, 2.



## EXTRADITION.

1. *Duty of courts after surrender has been made.*

Although the surrender of a person demanded under an extradition treaty has been made, it is the duty of the courts here to determine the legality of the subsequent imprisonment which depends upon the treaties in force between this and the surrendering governments. *Johnson v. Browne*, 309.

2. *Right of demanding country to try person for other than crime for which extradited—Effect of treaty of 1842 with Great Britain.*

While the treaty of 1842, with Great Britain, had no express limitation of the right of the demanding country to try a person only for the crime for which he was extradited, such a limitation is found in the manifest scope and object of the treaty itself and it has been so construed by this court. (*United States v. Rauscher*, 119 U. S. 407.) *Ib.*

3. *Right of demanding country to punish person for offense other than that for which extradited—Treaty of 1899 with Great Britain.*

A person extradited under the treaty of 1899 with Great Britain cannot be punished for an offense other than that for which his extradition has been demanded even though prior to his extradition he had been convicted and sentenced therefor. Sections 5272, 5275, Rev. Stat., clearly manifest the will of the political department of the government, that a person extradited shall be tried only for the crime charged in the warrant of extradition, and shall be allowed a reasonable time to depart out of the United States before he can be arrested and detained for any other offense. *Ib.*

4. *Effect of treaty of 1899 with Great Britain to repeal §§ 5272, 5275, Rev. Stat.*

Repeals by implication are never favored, and a later treaty will not be regarded as repealing, by implication, an earlier statute unless the two are so absolutely incompatible that the statute cannot be enforced without antagonizing the treaty, and so held that the treaty with Great Britain of 1899 did not repeal §§ 5272, 5275, Rev. Stat. *Ib.*

5. *Construction of treaties; good faith to be observed in.*

While the escape of criminals is to be deprecated, treaties of extradition should be construed in accordance with the highest good faith, and a treaty should not be so construed as to obtain the extradition of a person for one offense and punish him for another, especially when the latter offense is one for which the surrendering government has refused to surrender him on the ground that it was not covered by the treaty. *Ib.*

## FACTS.

See PRACTICE AND PROCEDURE, 7.

## INDEX.

## FEDERAL POWERS.

*See* CONSTITUTIONAL LAW, 9.

## FEDERAL QUESTION.

*See* APPEAL AND ERROR;  
CONSTITUTIONAL LAW, 3;  
JURISDICTION.

## FIFTH AMENDMENT.

*See* CONSTITUTIONAL LAW, 10.

## FINDINGS OF FACT.

*See* PRACTICE AND PROCEDURE, 7.

## FLAG.

*See* CONSTITUTIONAL LAW, 6;  
PERSONAL RIGHTS;  
STATES, 2.

## FORECLOSURE.

*See* MORTGAGES AND DEEDS OF TRUST;  
SALES, 2.

## FOREIGN CORPORATIONS.

*See* JURISDICTION, A 8; B 2;  
PROCESS;  
STATES, 6.

## FOURTEENTH AMENDMENT.

*See* CONSTITUTIONAL LAW;  
COURTS, 3.

## FULL FAITH AND CREDIT.

*See* CONSTITUTIONAL LAW, 11, 12;  
JUDGMENTS AND DECREES, 5.

## GOVERNMENTAL POWER.

*See* CONSTITUTIONAL LAW, 9;  
CONTRACTS, 4;  
STATES, 1, 2.

## GOVERNMENT INSTRUMENTALITIES.

*See* TAXES AND TAXATION, 2, 3, 4.

## GRANTS.

*See* CONTRACTS, 4.

GREAT BRITAIN.

See EXTRADITION, 2, 3;  
TREATIES.

HABEAS CORPUS.

See COURTS, 3.

HEARSAY EVIDENCE.

See EVIDENCE.

HOMESTEADS.

See PUBLIC LANDS, 1, 2.

HOMICIDE.

See CRIMINAL LAW, 1.

IMPAIRMENT OF CONTRACT OBLIGATION.

See CONSTITUTIONAL LAW, 5;  
CONTRACTS, 3.

INDIANS.

1. *Allotments—Secretary of Interior to determine who are members of tribe—Mandamus will not lie to control his decision.*

While the promise of the United States to allot 160 acres to each member of the Wichita band of Indians under the act of March 2, 1895, 28 Stat. 876, 895, may confer a right on every actual member of the band, the primary decision as to who the members are must come from the Secretary of the Interior; and, in the absence of any indication in the act to allow an appeal to the courts for applicants who are dissatisfied, mandamus will not issue to require the Secretary to approve the selection of one claiming to be an adopted member of the tribe but whose application the Secretary has denied. *West v. Hitchcock*, 80.

2. *Control by Department of Interior over adoption of whites into tribes.*

In view of long established practice of the Department of the Interior, and the undoubted power of Congress over the Indians, this court will hesitate to construe the language of §§ 441, 463, Rev. Stat., as not giving the Department of the Interior control over the adoption of whites into the Indian tribes. *Ib.*

3. *Jurisdiction of Secretary of Interior to determine right to select land.*

Where the Secretary of the Interior has authority to pass on the right of one claiming to be a member of a band of Indians to select land under an agreement ratified by an act of Congress, his jurisdiction does not depend upon his decision being right. *Ib.*

INDICTMENT.

See CRIMINAL LAW, 5;  
JURISDICTION, A 5, 6.

## INHERITANCE TAX.

See CONSTITUTIONAL LAW, 5.

## INJUNCTION.

See JURISDICTION, B 3.

## INSTRUCTIONS TO JURY.

See CRIMINAL LAW, 2;

VERDICT.

## INSURANCE.

1. *State regulation.*

If an insurance company does business in a State it must do so subject to such valid regulations as the State adopts. *Whitfield v. Aetna Life Ins. Co.*, 489.

2. *Defenses to actions on policies of life insurance; limitation by States.*

The statute of Missouri, that suicide, unless contemplated when the policy was applied for, shall be no defense to actions on policies of life insurance, is a legitimate exercise of the power of the State; and a stipulation in a policy that the company shall only be liable for a portion of the amount in case of suicide, not contemplated when the policy was applied for, is void, and cannot be set up as a defense. *Ib.*

See BANKRUPTCY, 2;

JURISDICTION, A 8;

STATES, 6.

## INTERIOR DEPARTMENT.

See INDIANS.

## INTERPRETERS.

See CRIMINAL LAW, 4.

## INTERSTATE COMMERCE.

See CONSTITUTIONAL LAW, 1; STATES, 8, 9.

SAFETY APPLIANCE ACT; STATUTES, A 2.

## INTOXICATING LIQUORS.

See CONSTITUTIONAL LAW, 1;

STATES, 7, 8, 9, 10.

## ISLE OF PINES.

See TERRITORY, 2.

## JUDGMENTS AND DECREES.

1. *Right to attack validity of judgment sued on.*

Whatever remedies may exist as to the judgment in the State where ren-

dered, want of jurisdiction may be pleaded by the judgment debtor wherever the judgment is set up against him in another forum. *Wetmore v. Karrick*, 141.

2. *Correction of clerical mistake cannot be made after term without notice.*

Although a mistake in regard to a judgment may be a clerical one it cannot be corrected after the term without notice, especially where the condition of the parties has changed in view of new rights acquired which render it prejudicial to enter a new judgment. *Ib.*

3. *Judgment rendered after loss of jurisdiction and without notice to party, invalid.*

Jurisdiction once lost can only be regained by some proper notice to the other party and where, as in this case, had notice been given of the motion to render a new judgment defendant could have pleaded a discharge in bankruptcy, substantial rights are impaired, and the judgment so rendered without notice is void. *Ib.*

4. *When judgment final under Massachusetts law.*

In Massachusetts the rule day when a judgment becomes final is equivalent to the end of a term, and in that State the rule is that judgment is final unless set aside within the exceptions for mistake. *Ib.*

5. *Validity of new judgment rendered after term at which original judgment entered.*

A court which has once rendered a judgment in favor of a defendant, dismissing the cause and discharging him from further attendance, cannot, after the term or at a subsequent term, without notice to the defendant, set that judgment aside and render a new judgment against the defendant; a judgment so entered is void and not required to be enforced in another State under the full faith and credit clause of the Constitution. *Ib.*

6. *On demurrer.*

A judgment on demurrer is as conclusive as one rendered on proof. *Northern Pacific Railway v. Slayht*, 122.

See CONSTITUTIONAL LAW, 11, 12;  
JURISDICTION, A 7; B 6;  
RES JUDICATA, 1, 2.

JUDICIAL DISCRETION.

See CRIMINAL LAW, 4.

JUDICIAL NOTICE.

See COURTS, 4.

JUDICIAL SALES.

See SALES, 2, 3.

## JURISDICTION.

## A. OF THIS COURT.

1. *Amount in controversy—Commissions of fiduciary convicted of embezzlement—Review of judgment of Court of Appeals of District of Columbia.*

One who embezzles money from an estate forfeits his right to commissions, irrespective of whether he is or is not convicted of any crime in respect thereto, and his conviction does not involve the pecuniary amount of the commissions which he forfeits by reason of the embezzlement; nor does the fact that such commissions amount to over \$5,000 give this court jurisdiction under § 233 of the Code to review the judgment of the Court of Appeals of the District of Columbia affirming the conviction. The rule that a writ of error does not lie from this court to the Court of Appeals of the District of Columbia in a criminal case applies in such a case. *Fields v. United States*, 292.

2. *Conclusiveness of judgment of state court.*

Whether a state lien statute, otherwise constitutional, applies to vessels not to be used in the waters of the State; on whose credit the supplies were furnished; whether the lien was properly filed as to time and place; and what the effect thereof is as to *bona fide* purchasers without notice, are not Federal questions, but the judgment of the state court is final and conclusive in this court. *The Winnebago*, 354.

3. *Of appeal or writ of error from territorial court under act of March 3, 1905.*

Where no right of appeal existed when the final judgment was entered in the Supreme Court of a Territory, an appeal or writ of error will not lie under the act of March 3, 1905, 33 Stat. 1035, granting appeals in certain cases, because after final judgment a petition for rehearing was entertained and not finally denied until after the passage of the act. *Harrison v. Magoon*, 501.

4. *Under § 709, Rev. Stat.; materiality of question of citizenship.*

The question of citizenship is immaterial as affecting the jurisdiction of this court under § 709, Rev. Stat. As a general rule aliens are subject to the law of the territory where the crime is committed. *Barrington v. Missouri*, 483.

5. *To review decision of state court as to compliance with state statute.*

Under the laws of Missouri the right of accused to the endorsement of names of witnesses on the indictment does not rest on the common law but on state statute, and whether the provisions have been complied with is not a Federal question and the decision of the state court is not open to revision here. *Ib.*

6. *Of writ of error where Federal questions alleged to have been raised are without merit—Review of rulings of state court in criminal case.*

Although the brief alleges that certain Federal questions were duly raised in the state court and so disposed of as to sustain the jurisdiction of this court, if those questions are wholly without merit, or foreclosed

by previous decisions of this court, the writ of error will be dismissed; and *held* that rulings of the state court in a criminal case in regard to change of venue, admission of evidence, and form of indictment were not subject to review in this court and afforded no basis for holding that plaintiff in error was not awarded due process of law. *Ib.*

7. *Of direct appeal from Circuit Court—Involution of construction and application of Constitution and laws of United States.*

In a suit in the Circuit Court of the United States where diverse citizenship exists, if the real question is the controlling effect of *res judicata* of a decree rendered between the parties in another suit, and whether the court rendering it had jurisdiction so to do and those questions are decided upon principles of general law, the case is not one involving the construction and application of the Constitution and laws of the United States, and a direct appeal does not lie to this court under § 5 of the Court of Appeals Act of 1891, 29 Stat. 492; nor can the decision appealed from be converted into one involving the construction and application of the Constitution by averring argumentatively that to give such effect to the former adjudication amounts to depriving a party of due process of law. *Empire State-Idaho Mining Co. v. Hanley*, 225.

8. *On writ of error to state court; involution of Federal question to confer—Power of State relative to foreign insurance companies.*

Where the state court decides that a foreign insurance company cannot recover assessments on a policy issued within the State because it has not complied with the statutory conditions imposed by the State, no Federal question is involved, and a request to find that the state statute could not prevent the insured from going outside the State and obtaining insurance on property within the State does not raise a Federal question, where the fact was otherwise, and the writ of error will be dismissed. *Swing v. Weston Lumber Co.*, 275.

See APPEAL AND ERROR;  
CONSTITUTIONAL LAW, 4;  
PRACTICE AND PROCEDURE, 9.

B. OF CIRCUIT COURTS.

1. *Amount in controversy; value of right of an exchange to control quotations.*

In a suit brought by an exchange to enjoin defendant from receiving quotations from the telegraph company to which it has given the right to distribute them, and from using the same, the value involved is not merely the amount which defendant pays the telegraph company, but the right of the exchange to keep the control of the quotations and protect itself from competition which is the object of the suit; and if the testimony shows, as it does in this case, that such right is worth more than \$2,000, the Circuit Court has jurisdiction, so far as amount is concerned; and when the plea presents such an issue the burden is on appellant to show that the amount involved is less than the jurisdictional amount. *Hunt v. New York Cotton Exchange*, 322.

2. *When service on non-resident corporation sufficient to give court jurisdiction in case of diverse citizenship.*

While in case of diverse citizenship the suit may be brought in the Circuit Court for the district of the residence of either party, there must be service within the district; and if the defendant is a non-resident corporation service can only be made upon it if it is doing business in that district in such a manner, and to such an extent, as to warrant the inference that it is present there through its agent. *Green v. Chicago, B. & Q. Ry. Co.*, 530.

3. *Under § 720, Rev. Stat.—Effect of pendency of prior suit in state court.*

The fact that defendant has, in another action in the state court, and to which the exchange was not a party, obtained an injunction against the telegraph company, enjoining it from ceasing to deliver the quotations, does not deprive the Circuit Court of jurisdiction of the suit by the exchange under § 720, Rev. Stat., the parties and the purpose not being the same. *Hunt v. New York Cotton Exchange*, 322.

4. *Of suit to remove cloud on title to land where construction of act of Congress admitting a State to the Union and defining its boundaries is involved.*

Where the bill is brought in the Circuit Court to quiet, and remove a cloud upon, the title to land alleged to be within the State and District where the suit is brought, and the cloud is based upon tax sales made under the authority of an adjoining State in which defendants claim the land is situated, although the chief difference may be upon the question of fact as to the location of the boundary line between the two States, if the construction of the act of Congress admitting one of the States to the Union and defining its boundaries is also in dispute the Circuit Court has jurisdiction of the case as one arising under the Constitution or laws of the United States. (*Joy v. St. Louis*, 201 U. S. 332, distinguished.) *Moore v. McGuire*, 214.

5. *Under § 8 of act of March 3, 1875—What constitutes a suit within meaning of that act.*

A suit brought by owners of stock of a railroad company for the cancellation of deeds and leases under and by authority of which the properties of the company are held and managed is a suit within the meaning of § 8 of the act of March 3, 1875, 18 Stat. 470, as one to remove incumbrances or clouds upon real or personal property and local to the district and within the jurisdiction of the Circuit Court for the district in which the property is situated, without regard to the citizenship of defendants so long as diverse to that of the plaintiff, and foreign defendants not found can be brought in by order of the court subject to the condition prescribed by that section, that any adjudication affecting absent non-appearing defendants shall affect only such property within the districts as may be the subject of the suit and under the jurisdiction of the court. *Citizens' Sav. & Trust Co. v. Illinois Central R. R.*, 46.



6. *Under act of March 3, 1875; effect of appearance of non-resident defendant for sole purpose of denying jurisdiction.*

Non-resident defendants appearing in the Circuit Court under protest for the sole purpose of denying jurisdiction do not waive the condition in § 8 of the act of March 3, 1875, 18 Stat. 470, that any judgment of the court shall affect only property within the district. *Ib.*

7. *Court cannot proceed to judgment and award damages for injuries occurring in Mexico, contrary to the laws of that Republic.*

The certified question: "In an action brought in the United States Circuit Court in and for the Western District of Texas by a citizen of that district against the Mexican Central Railway Company, a corporation duly created under the laws of the State of Massachusetts and doing business in and operating a steam railroad under continuous line in the State of Texas and the Republic of Mexico, to recover for injuries to the plaintiff, received while he was engaged in defendant's service, and whereby, through defective appliances furnished by said railroad company and the negligent operation of the said railroad in the Republic of Mexico, the said plaintiff, at Ebano, Mexico, was injured and lost a leg, can the said court proceed to judgment and award such damages as upon proof may be assessed by a jury, notwithstanding the provisions of the laws of the Republic of Mexico, proved on this trial and recited in the statement of this case, and which, it is agreed, were the laws of Mexico applicable herein in force and effect at the time of the injuries complained of?" answered in the negative. *Mexican Central Ry. Co. v. Eckman*, 538.

*See* PROCESS, 4.

#### C. OF ADMIRALTY COURTS.

*See* JURISDICTION, E.

#### D. OF BANKRUPTCY COURTS.

*See* BANKRUPTCY, 3.

#### E. OF STATE COURTS.

*To enforce contract to build vessel.*

A contract to build a vessel is not a maritime contract enforceable only in admiralty, but the remedy is within the jurisdiction of the state court, and this rule applies to items furnished the vessel after she has been launched, but which are really part of her original construction. *The Winnebago*, 354.

*See* BANKRUPTCY, 3.

#### F. OF SECRETARY OF INTERIOR.

*See* INDIANS, 3.

#### G. GENERALLY.

*See* CONSTITUTIONAL LAW, 12;

JUDGMENTS AND DECREES, 1, 3;

PRACTICE AND PROCEDURE, 8.

## JURY.

See NEGLIGENCE, 3, 4.

## JURY TRIAL.

See CRIMINAL LAW, 5.

## LAND DEPARTMENT.

See PUBLIC LANDS, 1.

## LIBERTY.

See COURTS, 3;  
PERSONAL RIGHTS.

## LICENSES.

See CONSTITUTIONAL LAW, 1.

## LIENS.

See BANKRUPTCY, 3;  
JURISDICTION, A 2.

## LIFE INSURANCE.

See BANKRUPTCY, 2.

## LIMITATION OF ACTIONS.

*As to government patentee.*

A statute of limitations does not commence to run against a government patentee until after the patent has been issued to him. *Northern Pacific Railway v. Slaght*, 122.

## LIQUIDATED DAMAGES.

See CONTRACTS, 2.

## LOCAL LAW.

*Generally. Questions that are local.* Whether an information for contempt is properly supported, and what constitutes contempt, as well as the time during which it may be committed, are all matters of local law. *Patterson v. Colorado*, 454.

See CRIMINAL LAW, 6.

*Illinois.* Practice Act, § 57 (see Verdict). *Wilmington Mining Co. v. Fulton*, 60.

*Mining act of 1899—Relation of mine manager and examiner as vice-principals.* As construed by the highest court of that State, under the mining act of Illinois of 1899, a mine manager and mine examiner are vice-principals of the owner and engaged in the performance of duties which the owner cannot so delegate to others as to relieve himself from responsibility. *Ib.*

See CONSTITUTIONAL LAW, 7.

- Iowa*. Taxation of savings banks, etc., § 1332 of Code (see Taxes and Taxation, 3). *Home Savings Bank v. Des Moines*, 503.
- Massachusetts*. Judgments. Terms of court (see Judgments and Decrees, 4). *Wetmore v. Karrick*, 141.
- Missouri*. Suicide as defense to action on life insurance policy (see Insurance, 2). *Whitfield v. Aetna Life Ins. Co.*, 489. Criminal law; right of accused to indorsement on indictment of names of witnesses (see Jurisdiction, A 5). *Barrington v. Missouri*, 483.
- Nebraska*. Flag law (see Constitutional Law, 6). *Halter v. Nebraska*, 34.
- New York*. Inheritance and transfer tax law. Laws of 1897, ch. 284 (see Constitutional Law, 5). *Chanler v. Kelsey*, 466.
- South Dakota*. Liquor license law (see Constitutional Law, 1). *Delamater v. South Dakota*, 93 (see Statutes, A 2); *Ib.*

## MANDAMUS.

See INDIANS, 1.

## MARITIME CONTRACTS.

See JURISDICTION, E.

## MARITIME LIENS.

See JURISDICTION, E;  
PRACTICE AND PROCEDURE, 6.

## MARKET QUOTATIONS.

See PROPERTY.

## MARRIAGE.

*Proof of marriage in fact by habit and repute.*

A man and woman, neither of whom was a resident of Virginia, and who had not obtained any marriage license, went through a ceremony in Virginia which the woman thought was a marriage by a clergyman; they immediately went to New Jersey, she assuming the man's name; they afterwards went to Maryland and then returned to New Jersey permanently, where they lived and cohabitated as husband and wife and were so regarded for many years until his death, she joining in a mortgage with him, and also being described in his wills as his wife; she meanwhile and, prior to the later residence in New Jersey, had ascertained that the person performing the ceremony was not a minister and that there was no license, but the cohabitation continued and there was testimony that the man assured her that they were married, and afterwards in his last will he appointed his wife executrix and she qualified as such. *Held*, that marriage in fact, as distinguished from a ceremonial marriage, may be proved by habit and repute, and, except in cases of adultery and bigamy when actual proof is required, may be inferred from continued cohabitation. *Travers v. Reinhardt*, 423.

## MASTER AND SERVANT.

*Liability of master for injuries to servant.*

Where two concurring causes contribute to an accident to an employé, the fact that the master is not responsible for one of them does not absolve him from liability for the other cause for which he is responsible. *Wilmington Mining Co. v. Fulton*, 60.

See LOCAL LAW (ILL.); SAFETY APPLIANCE ACT;  
NEGLIGENCE, 1; STATES, 5.

## MERGER.

See CORPORATIONS, 1.

## MINES AND MINING.

See CONSTITUTIONAL LAW, 7;  
LOCAL LAW (ILL.).

## MISSISSIPPI.

See BOUNDARIES.

## MISSISSIPPI RIVER.

See BOUNDARIES.

## MISTAKE.

See ELECTION; 2;  
JUDGMENTS AND DECREES, 2.

## MORTGAGES AND DEEDS OF TRUST.

*Foreclosure; effect of sale of part of mortgaged premises to sovereign who refuses to waive exemption from suit.*

Under Equity Rule 92, where a part of the mortgaged premises has been sold to the sovereign power which refuses to waive its exemption from suit, the court can, all other parties being joined, except the land so conveyed and decree sale of the balance and enter deficiency judgment for sum remaining due if proceeds of sale are insufficient to pay the debt. *Kawananakoa v. Polyblank*, 349.

## MURDER.

See CRIMINAL LAW, 1.

## NATIONAL EMBLEM.

See CONSTITUTIONAL LAW, 6;  
PERSONAL RIGHTS;  
STATES.

## NEGLIGENCE.

1: *Distinction between assumption of risk and negligence.*

Assumption of risk as extended to dangerous conditions of machinery.

premises and the like, obviously shades into negligence as commonly understood. The difference between the two is one of degree rather than of kind. *Schlemmer v. Buffalo, R. & P. Ry. Co.*, 1.

2. *Want of care constituting negligence.*

There is an obligation on all persons to take the care which, under the special circumstances of the case, a reasonable and prudent man would take, and the omission of that care constitutes negligence. *Davidson Steamship Co. v. United States*, 187.

3. *Province of jury—Negligence of captain and pilot of ship in colliding with Government breakwater—Practice of following findings concurred in by two lower courts.*

It is within the province of the jury to determine whether a captain of a steamship, also acting as pilot thereof, who fails to keep himself informed of changes made from time to time in the different harbors which he is likely to visit, is guilty of negligence in colliding with a Government breakwater, in course of erection, and on which the lights have been changed, and even though there may have been evidence warranting the finding of contributory negligence on the part of the Government in the way it left the lights, this court will not set aside the verdict after it has been approved by the trial court and the Circuit Court of Appeals. *Ib.*

4. *When question for jury and its determination conclusive.*

Where negligence is a mere question of fact and nothing appears which is negligence *per se*, the determination of the question is peculiarly the province of the jury and its conclusions will not be disturbed unless it is entirely clear that they were erroneous. *Ib.*

NOTICE.

*See* JUDGMENTS AND DECREES, 2, 3.

NON-RESIDENTS.

*See* JURISDICTION, B 6.

ORIGINAL PACKAGE.

*See* STATES, 8.

PARTIES.

*See* MORTGAGES AND DEEDS OF TRUST;  
PRACTICE AND PROCEDURE, 3, 6.

PARTNERSHIP.

*See* PROCESS, 2.

PATENT FOR LAND.

*See* LIMITATION OF ACTIONS;  
PUBLIC LANDS, 2.

## PENALTIES AND FORFEITURES.

See CONTRACTS, 2.

## PERSONAL PROPERTY.

See TAXES AND TAXATION, 5.

## PERSONAL RIGHTS.

*Limitation of privilege of citizenship and rights inhering in personal liberty.*  
The privileges of citizenship and the rights inhering in personal liberty are subject in their enjoyment to such reasonable restraints as may be required for the public good; and no one has a right of property to use the Nation's emblem for individual purposes. *Halter v. Nebraska*, 34.

## PILOTS.

See NEGLIGENCE, 3.

## PLATT AMENDMENT.

See TERRITORY, 2.

## PLEADING.

*Demurrer; admissions by.*

The averment that territory named in the complaint is a part of the United States is a conclusion of law and not admitted by a demurrer. *Pearcy v. Stranahan*, 257.

See COURTS, 4;

RES JUDICATA, 2;

JUDGMENTS AND DECREES, 1;

SAFETY APPLIANCE ACT, 3.

## POLICE POWER.

See CONSTITUTIONAL LAW, 7;

STATES, 5, 7.

## POWERS.

See CONSTITUTIONAL LAW, 5;

PRACTICE AND PROCEDURE, 5;

TITLE.

## POWERS OF CONGRESS.

See TERRITORIES.

## PRACTICE AND PROCEDURE.

1. *As to showing of error.*

It is for the plaintiff in error to show affirmatively that error was committed; it is not to be presumed and will not be inferred from a doubtful statement in the record. *Mercantile Trust Co. v. Hensey*, 298.

2. *As to duty of counsel to call trial court's attention to error; and effect on appeal of failure to do so.*

Where there is no evidence of the amount of damage caused by each par-

ticular breach but only of the total amount sustained, the attention of the trial court should have been called to the plaintiff's objection to a recovery of particular damage permitted, and a request made for direction of verdict, and in the absence thereof the objection cannot be argued here. *Ib.*

3. *As to declaring state law unconstitutional at suit of one whose constitutional rights are not invaded.*

A state law will not be held unconstitutional in a suit coming from a state court at the instance of one whose constitutional rights are not invaded, because as against a class making no complaint it might be held unconstitutional. *The Winnebago*, 354.

4. *As to determination of boundary between States at suit of private parties.*

In this case the court determined a controversy between private parties involving the location of the boundary line between two States favorably to the party in possession of the land involved under the authority of the State actually exercising jurisdiction thereover, but expressed doubt as to whether courts should in such a case go further than the actual conditions rather than leave it to the other State, if dissatisfied, to bring a suit in its own name. *Moore v. McGuire*, 214.

5. *Following decision of state court.*

This court must follow the decision of the state court in determining that the essential thing to transfer an estate is the exercise of a power of appointment. *Chanler v. Kelsey*, 466.

6. *When constitutionality of state statute will not be determined—Necessary parties.*

Whether a state lien statute is unconstitutional as permitting the seizure and sale of a vessel and the distribution of the proceeds in conflict with the exclusive jurisdiction in admiralty of the Federal courts will not be determined in a suit from the state courts where no holder of a maritime lien is present contesting the unconstitutionality of the statute. *The Winnebago*, 354.

7. *Statement of facts found by court appealed from; necessity for.*

In an appeal from the Supreme Court of the Territory of Hawaii, tried by the court of first instance without a jury, where the Supreme Court of the Territory reversed the conclusions of law, but took the findings of fact as true, and those findings are not open to dispute, but the question for decision is definite and plain, there is no need to send the case back for a statement of facts by the Supreme Court of the Territory, although one should have been made. *Bierce v. Hutchins*, 340.

8. *Effect of failure to make defense—Power to raise in this court question not presented below.*

The failure to make a defense by a party who is in court is, generally speaking, equivalent to making a defense and having it overruled; and

where the question of the jurisdiction of a court in a particular case over property in its actual possession was not presented in that court, the appellant cannot, in this court, question the power of that court to order a sale of the property or the title conveyed to the purchaser. *Gila Reservoir Co. v. Gila Water Co.*, 279.

9. *Certificate of Circuit Court of Appeals must present distinct point of law—When question certified will not be answered.*

Under § 6 of the Circuit Court of Appeals Act of March 3, 1891, 26 Stat. 826, the certificate of the Circuit Court of Appeals as to questions or propositions of law concerning which it desires instruction must present a distinct point of law, clearly stated, which can be decided without passing upon the weight or effect of the advice on which the question arises, and if not so presented this court is without jurisdiction; and where the question certified practically brings up the entire case, and this court is asked to pass upon the validity of a contract and indicate what the final judgment should be, the certificate will be dismissed and the questions not answered. *Chicago, B. & Q. Ry. v. Williams*, 444.

10. *Question certified by Circuit Court of Appeals must be single.*

Where a question certified by the Circuit Court of Appeals contains more than a single question or proposition of law it will not be answered by this court. *Quinlan v. Green County*, 410.

<i>See</i> APPEAL AND ERROR;	CRIMINAL LAW, 6;
BANKRUPTCY, 4;	JURISDICTION, A 2, 6;
CONSTITUTIONAL LAW, 2;	NEGLIGENCE, 3;
COURTS, 3;	VERDICT.

#### PRESUMPTIONS.

*See* BANKRUPTCY, 4.

#### PRIVILEGES AND IMMUNITIES.

*See* CONSTITUTIONAL LAW, 7.

#### PROCESS.

1. *Service on foreign corporation.*

Foreign corporations can be served with process in a State only when doing business therein, and such service must be upon an agent who represents the corporation in such business. *Peterson v. Chicago, R. I. & P. Ry. Co.*, 364.

2. *Sufficiency of service on corporation—What constitutes partnership of railroads.*

There is no partnership liability under such circumstances by which the company owning or controlling the capital stock of the other can be brought into court to respond for a tort by serving the latter company with process. *Ib.*



3. *What constitutes doing business in State for purpose of service of process on corporation.*

Under the circumstances of this case a railroad company is not doing business in a State simply because another railroad company, of which it owns practically the entire capital stock, does do business therein, nor is the latter company or its officers and employes agents of the former company for the purpose of service of process even though such agents may at times also represent that company as to business done in other States. *Ib.*

4. *What constitutes doing business within district by non-resident railroad to render it liable to service of process.*

A railroad company which has no tracks within the district is not doing business therein in the sense that liability for service is incurred because it hires an office and employs an agent for the merely incidental business of solicitation of freight and passenger traffic. *Green v. Chicago, B. & Q. Ry. Co.*, 530.

See CRIMINAL LAW, 6;  
JURISDICTION, B 2.

#### PROPERTY.

*Quotations of prices collected by an exchange are property.*

Quotations of prices on an exchange, collected by the exchange, are property and entitled to the protection of the law, and the exchange has the right to keep them to itself or have them distributed under conditions established by it. (*Board of Trade v. Christie Grain & Stock Co.*, 198 U. S. 236.) *Hunt v. New York Cotton Exchange*, 322.

See JURISDICTION, B 1;  
CONSTITUTIONAL LAW, 2.

#### PUBLICATIONS

See COURTS, 2.

#### PUBLIC LANDS.

1. *Homesteads—Conclusiveness of findings of Land Department.*

In a contest over a homestead entry, whether there was a sale and whether the thing sold was or was not the tract in question, are matters of fact to be determined by the testimony, and the findings of the Land Department in those respects are conclusive in the courts. *Love v. Flahive*, 195.

2. *Homesteads—Right of homesteader to abandon or relinquish rights in land—Effect of attempt to sell.*

While a homesteader cannot make a valid and enforceable contract to sell the land he is seeking to enter, he is not bound to perfect his application but may abandon or relinquish his rights in the land, and if he in fact makes a sale he is no longer interested in the land and the

Government can treat the sale as a relinquishment and patent the land to other applicants. *Ib.*

*See* LIMITATION OF ACTIONS.

#### PUBLIC POLICY.

*See* STATES, 3.

#### QUOTATIONS.

*See* PROPERTY;  
JURISDICTION, B 1.

#### RAILROADS.

*See* JURISDICTION, B 7;  
PROCESS;  
SAFETY APPLIANCE ACT.

#### RECEIVERS.

*See* BANKRUPTCY, 3.

#### REHEARING.

Petition for rehearing in *Gila Reservoir Co. v. Gila Water Co.*, 202 U. S. 270, denied, 279.

#### REMOVAL FOR TRIAL.

*See* CRIMINAL LAW.

#### REPEALS.

*See* EXTRADITION, 4.

#### REPLEVIN.

*See* SALES, 1.

#### RES JUDICATA.

##### 1. *When judgment bar to second action; and extent of bar.*

The question as to the effect of a judgment as *res judicata* when pleaded in bar of another action is its legal identity with the judgment sought in the second action, and, as a general rule, its extent as a bar is not only what was pleaded or litigated, but what could have been pleaded or litigated. *Northern Pacific Railway v. Slaght*, 122.

##### 2. *Extension of bar to what might have been pleaded.*

Where a plaintiff could have pleaded rights to property in addition to those pleaded, he and his grantees are bound by that election, and after an adverse judgment cannot again assert title to the same property against the same parties under a different source of title. *Ib.*

*See* JURISDICTION, A 7; B 3.

## REVISED STATUTES.

*See* ACTS OF CONGRESS.

## SAFETY APPLIANCE ACT.

1. *Rolling stock included within provisions of—Application to locomotives and steam-shovel cars.*

The provisions of § 2 of the Safety Appliance Act of March 2, 1893, as amended April 1, 1896, declaring it to be unlawful for any common carrier engaged in interstate commerce to haul or permit to be hauled or used on its line any car used in moving interstate commerce not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars, relate to all kinds of cars running on the rails, including locomotives and steam-shovel cars. (*Johnson v. Southern Pacific Co.*, 196 U. S. 1.) *Schlemmer v. Buffalo, R. & P. Ry. Co.*, 1.

2. *Object of act and significance of words "used in moving interstate traffic."*

The object of that statute was to protect the lives and limbs of railroad employés by rendering it unnecessary for men operating the couplers to go between the ends of the cars, and the words "used in moving interstate traffic" occurring therein are not to be taken in a narrow sense. *Ib.*

3. *Effect of proviso of § 6; duty of parties to suit in respect of.*

In a suit based upon the Safety Appliance Act of March 2, 1893, as amended April 1, 1896, the plaintiff is not called upon to negative the proviso of § 6 of said act, either in his pleadings or proofs. Such proviso merely creates an exception and if the defendant wishes to rely thereon the burden is upon it to bring itself within the terms of the exception; those who set up such an exception must establish it. *Ib.*

4. *Assumption of risk by employé—So-called contributory negligence held within exoneration of employé.*

Section 8 of the Automatic Coupler Act having exonerated the employé from assumption of risk under specified conditions, the employé's rights in that regard should not be sacrificed by charging him with assumption of risk under another name, for example, with contributory negligence. In this case the so-called contributory negligence of the deceased employé was so involved with and dependent upon erroneous views of the statute, that the judgment complained of must be reversed. *Ib.*

## SALES.

1. *Conditional—Validity of stipulation that title to goods is to remain in vendor until payment of note given for purchase-price.*

The absolute liability for the price and putting that liability in the form of a note are consistent with the retention of title until the note is paid; and, in the absence of statute, a stipulation that the sale is conditional and the goods remain the property of the seller, until payment of a note

given for the price, is lawful and enforceable in replevin even where, as in this case, possession was given and additional security of mortgage bonds was required. *Bierce v. Hutchins*, 340.

2. *Confirmation; when denied.*

While the confidence in the stability of judicial sales should not be disturbed, a sale under foreclosure of valuable property, worth at least seven times the amount of the bid, should not be confirmed in the face of an adverse report by the master and the trial court. *Ballentyne v. Smith*, 285.

3. *Setting aside for inadequacy of price.*

The old English rule that in chancery sales, until confirmation of the master's report the bidding would be opened upon a mere offer to advance the price ten per cent has been rejected, and a sale will not be set aside for inadequacy of price unless so great as to shock the conscience or where there are additional circumstances against its fairness; and each case stands upon its own facts. *Ib.*

See MORTGAGES AND DEEDS OF TRUST;  
PUBLIC LANDS, 1, 2.

SECRETARY OF THE INTERIOR.

See INDIANS, 1, 3.

SERVICE OF PROCESS.

See PROCESS, 1.

SITUS FOR TAXATION.

See TAXES AND TAXATION, 5, 6.

SIXTH AMENDMENT.

See CONSTITUTIONAL LAW, 5.

SOVEREIGNTY.

See ACTIONS;  
TERRITORIES.

STATES.

1. *Legislative powers of.*

Except as restrained by its own fundamental law, or by the supreme law of the land, a State possesses all legislative power consistent with a republican form of government; and it may by legislation provide not only for the health, morals and safety of its people, but for the common good as involved in their well-being, peace, happiness and prosperity. *Halter v. Nebraska*, 34.

2. *Powers of Federal and state governments as to legislation in respect of National flag.*

There are matters which, by congressional legislation, may be brought

- within the exclusive control of the National Government but over which in the absence of such legislation the State may exert some control in the interest of its own people; and although the National flag of the United States is the emblem of National sovereignty and a congressional enactment in regard to its use might supersede state legislation in regard thereto, until Congress does act, a State has power to prohibit the use of the National flag for advertising purposes within its jurisdiction. *Ib.*

3. *Power as to adoption of public policy—Respect by courts of legislative will.*

A State may adopt such public policy as it deems best, provided it does not in so doing come into conflict with the Federal Constitution; and if constitutional the legislative will must be respected, even though the courts be of opinion that the statute is unwise. *Whitfield v. Aetna Life Ins. Co.*, 489.

4. *Power to classify for purposes of taxation.*

A State may consistently make a classification among its people based on some reasonable ground which bears a just and proper relation to the classification and is not arbitrary. *Halter v. Nebraska*, 34.

5. *Power to derogate common law in respect of relation of master and servant.*

It is within the power of the State to change or modify, in accord with its conceptions of public policy, the principles of the common law in regard to the relation of master and servant; and, in cases within the proper scope of the police power, to impose upon the master liability for the willful act of his employé. *Wilmington Mining Co. v. Fulton*, 60.

6. *Power to prohibit and regulate foreign insurance companies.*

The State has undoubted power to prohibit foreign insurance companies from doing business within its limits, or, in allowing them to do so, to impose such conditions as it pleases. *Swing v. Weston Lumber Co.*, 275.

7. *Intoxicating liquors; power to control dealing in.*

The general power of the States to control and regulate, within their borders, the business of dealing in, or soliciting orders for, the purchase of intoxicating liquors is beyond question. *Delamater v. South Dakota*, 93.

8. *Intoxicating liquors—Purpose of Wilson Act—Power of State over intoxicating liquors when subject of interstate commerce.*

The purpose of the Wilson Act, 26 Stat. 713, as a regulation of interstate commerce was to allow the States to exert ampler power as to intoxicating liquors when the subject of such commerce than could have been exercised before the enactment of that statute, which enabled the States to extend their authority as to such liquor shipped from other States before it became commingled with the mass of other property in the State by a sale in the original package. *Ib.*

9. *Intoxicating liquors—Effect of Wilson Act on power of State over interstate commerce in.*

Since the enactment of the Wilson law, which expressly provides that intoxicating liquors coming into a State should be as completely under control of the State as though manufactured therein, the owner of intoxicating liquor in one State cannot, under the commerce clause of the Constitution, go himself or send his agent into another State and, in defiance of its laws, carry on the business of soliciting proposals for the purchase of such liquors. *Ib.*

10. *Intoxicating liquors—Power of State when order for same contemplated a contract resulting from final acceptance in another State.*

Although a State may not forbid a resident therein from ordering for his own use intoxicating liquor from another State it may forbid the carrying on within its borders of the business of soliciting orders for such liquor although such orders may only contemplate a contract resulting from final acceptance in another State. (*Vance v. W. A. Vandercook Co.*, 170 U. S. 438, distinguished.) *Ib.*

See CONSTITUTIONAL LAW, 2, 7, INSURANCE, 1, 2;  
9, 10; JURISDICTION, A 8;  
CONTRACTS, 3; PRACTICE AND PROCEDURE, 4;  
TAXES AND TAXATION, 1, 2, 3, 6.

## STATUTE OF LIMITATIONS.

See LIMITATION OF ACTIONS.

## STATUTES.

### A. CONSTRUCTION OF.

1. *Repealing effect of judiciary act of 1887–1888.*

The repealing section of the judiciary act of 1887–1888 did not reach § 8 of the act of March 3, 1875, 18 Stat. 470, and that section is still in force. (*Jellinik v. Huron Copper Mining Co.*, 177 U. S. 1, 10.) *Citizens' Sav. & Trust Co. v. Illinois Central R. R.*, 46.

2. *South Dakota liquor license law not in conflict with Wilson Act.*

The highest court of South Dakota having held that the act imposing a license on travelling salesmen soliciting orders for intoxicating liquors is a police regulation and not a taxing act, it is within the purview of, and not in conflict with, the Wilson Act. (*Pabst Brewing Co. v. Crenshaw*, 198 U. S. 17, followed.) *Delamater v. South Dakota*, 93.

See ACTS OF CONGRESS; COURTS, 5;  
CONSTITUTIONAL LAW, 8; EXTRADITION, 4;  
SAFETY APPLIANCE ACT.

### B. OF THE UNITED STATES.

See ACTS OF CONGRESS.

### C. OF THE STATES AND TERRITORIES.

See LOCAL LAW.

## STOCKHOLDERS.

See TAXES AND TAXATION, 4.

## STREETS AND HIGHWAYS.

See CONSTITUTIONAL LAW, 8.

## TARIFF.

See TERRITORY, 2.

## TAXES AND TAXATION.

1. *State; effect on legality of tax of right to levy tax having same ultimate incidence.*

If a State has not the power to levy a tax it will not be sustained merely because another tax which it might lawfully impose would have the same ultimate incidence. *Home Savings Bank v. Des Moines*, 503.

2. *States; power to tax United States securities.*

The tax upon the property of a bank in which United States securities are included is beyond the power of the State, and is also within the prohibition of § 3701, Rev. Stat., and other acts of Congress. *Ib.*

3. *States; taxation of government instrumentalities—Effect and validity of Iowa law taxing savings banks and trust companies.*

The substantial effect of section 1332 of the Code of Iowa providing that shares of stock of state and savings banks and loan and trust companies shall be assessed to such banks and companies and not to the individual stockholders, and that in fixing the value of the shares, capital, surplus and undivided earnings shall be taken into account, as the law has been construed by the highest court of the State, is to tax the property of the bank and not the shares of stock, and an assessment which includes government bonds owned by the bank in fixing the valuation of its shares is illegal and beyond the power of the State. *Ib.*

4. *Tax on shareholders as tax on corporation—Taxation of government securities.*

While the tax on an individual in respect to his shares in a corporation is not a tax on the corporation, and the value of the shares may be assessed without regard to the fact that the assets of the corporation include government securities, if the tax is actually on the corporation although nominally on the shares such securities may not be included in assessing the value of the shares for taxation. *Ib.*

5. *Situs for taxation of personal property.*

Neither the fiction that personal property follows the domicile of the owner, nor the doctrine that credits evidenced by notes have the situs of the latter, can be allowed to obscure the truth; and personal property may be taxed at its permanent abiding place although the domicile of the owner is elsewhere. *Metropolitan Life Ins. Co. v. New Orleans*, 395.

6. *State taxation of capital employed by non-resident in business of loaning money within State—Effect of removal from State of evidences of credit.*

Where a non-resident enters into the business of loaning money within a State and employs a local agent to conduct the business, the State may tax the capital employed precisely as it taxes the capital of its own citizens, in like situation, and may assess the credits arising out of the business, and the foreigner cannot escape taxation upon his capital by temporarily removing from the State the evidences of credits which, under such circumstances, have a taxable situs in the State of their origin. Loans made by a New York life insurance company on its own policies in Louisiana are taxable in that State although the notes may be temporarily sent to the home office. *Ib.*

See CONSTITUTIONAL LAW, 1, 5;  
CONTRACTS, 3.

TERMS OF COURT.

See JUDGMENTS AND DECREES, 2, 4, 5.

TERRITORY.

1. *Question of sovereignty political—Binding effect of determination.*

Who is the sovereign *de jure* or *de facto* of territory is not a judicial, but a political, question, the determination of which by the legislative and executive departments of any government conclusively binds the judges as well as all other officers, citizens and subjects of that government. (*Jones v. United States*, 137 U. S. 202.) *Pearcy v. Stranahan*, 257.

2. *Isle of Pines foreign country within meaning of Tariff Act of 1897.*

The Isle of Pines under the provisions of the Platt Amendment and the Constitution of the Republic of Cuba is *de facto* under the jurisdiction of the Republic of Cuba, and, as the United States has never yet taken possession thereof, it has remained and is foreign country within the meaning of the Dingley Tariff Act of 1897. (*De Lima v. Bidwell*, 182 U. S. 1; *United States v. Rice*, 4 Wheat. 246.) *Ib.*

TERRITORIES.

*Territories differentiated from District of Columbia.*

A Territory of the United States differs from the District of Columbia in that the former is itself the fountain from which rights ordinarily flow, although Congress may intervene, while in the latter the body of private rights is created and controlled by Congress and not by a legislature of the District. *Kawananakoa v. Polyblank*, 349.

See ACTIONS;  
COURTS, 4;  
PLEADING.

TERRITORIAL COURTS.

See JURISDICTION, A 3.



## TESTAMENTARY INTENT.

*See* WILLS.

## TITLE.

*When execution of power considered source of title.*

Notwithstanding the common law rule that estates created by the execution of a power take effect as if created by the original deed, for some purposes the execution of the power is considered the source of title. *Chanler v. Kelsey*, 466.

*See* RES JUDICATA, 2;  
SALES, 1.

## TORTS.

*See* PROCESS, 2.

## TRANSFER.

*See* ELECTION, 1;  
PRACTICE AND PROCEDURE, 5.

## TRANSFER TAX.

*See* CONSTITUTIONAL LAW, 5.

## TREATIES.

*Treaty with Great Britain; rights of aliens under.*

No treaty gives to subjects of Great Britain any different measure of justice than that secured to citizens of this country. *Barrington v. Missouri*, 483.

*See* EXTRADITION, 2, 3, 4, 5.

## TRIAL BY JURY.

*See* CRIMINAL LAW, 5.

## UNITED STATES.

*See* CONSTITUTIONAL LAW, 9;  
STATES, 2.

## VENDOR AND VENDEE.

*See* SALES, 1.

## VENUE.

*See* JURISDICTION, A 6.

## VERDICT.

*Instructed; defendant entitled to, as to counts of declaration not supported by evidence.*

Where there is no evidence sustaining certain counts in the declaration as to defendant's negligence, he is entitled to an instruction that no

recovery can be had under those counts, and where, as it was in this case, the refusal to so instruct is prejudicial error the verdict cannot be maintained, either at law or under § 57 of the Illinois Practice Act. *Wilmington Mining Co. v. Fulton*, 60.

#### VESSELS.

*See* JURISDICTION, A 2; E;  
NEGLIGENCE, 3.

#### WAIVER.

*See* JURISDICTION, B 6.

#### WICHITA INDIANS.

*See* INDIANS, 1.

#### WILLS.

*Construction; effect to be given words; force of testamentary intent.*

While the predominant idea of the testator's mind when discovered is to be heeded as against all doubtful and conflicting provisions which might defeat it, effect must be given to all the words of a will if by the rules of law it can be done; and the words "without leaving a wife or child or children" will not be construed as "without leaving a wife and child or children," notwithstanding a general dominant interest on the part of the testator that his real estate should descend only through his sons. *Travers v. Reinhardt*, 423.

#### WILSON ACT.

*See* STATES, 8, 9;  
STATUTES, A 2.

#### WORDS AND PHRASES.

*See* WILLS.

#### WRIT AND PROCESS.

*See* CERTIORARI;  
PROCESS.